U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass Ave, 3rd Floor
425 I Street N.W.
Washington, D.C. 20536

PUBLIC COPY

[redacted]

File: LOS 214F 1990 Office: LOS ANGELES, CALIFORNIA Date: OCT 30 2003

IN RE: Petitioner: [redacted]

Petition: Petition for Approval of School for Attendance by Nonimmigrant Students under Section 101(a)(15)(M)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(M)(i)

IN BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Petition for Approval of School for Attendance by Nonimmigrant Students (Form I-17) was denied by the District Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The district director's decision will be withdrawn and the case will be remanded to him for entry of a new decision.

The Form I-17 reflects that the petitioner in this matter, [redacted] established in 1999, is a private school that offers vocational or technical education. The school offers diplomas for completion of its Microsoft Certified Systems Engineer (M.C.S.E.) and E-Commerce programs.[1] The school declares an average annual enrollment of 20 students with 8 instructors. The petitioner seeks approval for attendance by M-1 nonimmigrant non-academic students. There is no indication in the record that the school has ever been approved for attendance by nonimmigrant students in the past.

On July 28, 2003, the district director denied the petition based upon the determination that the petitioner had failed to submit evidence of accreditation and evidence that the petitioner was an established institution of learning or other recognized place of study.

The appeal filed by the petitioner was timely filed but was not accompanied by any additional evidence. In the personal statement submitted on appeal, Izzat Khan, the owner of the petitioning school, states that the district director classified the petitioner "with the wrong group of schools" and applied "incorrect criteria for acceptance." Mr. Khan states that both the on-site contractor and the district director have assessed the petitioner as a school seeking approval for F-1 nonimmigrant students and that the district director's denial applied evidentiary standards not applicable to schools seeking M-1 approval.

We agree with the petitioner's statements and find that the district director did not accurately apply the evidentiary requirements to the petitioner's case. In addition to this error, we find that the district director failed to adequately address other evidentiary shortcomings. This failure rendered it impossible for the petitioner to respond in any meaningful way on appeal or for us to make any determination as to the sufficiency of evidence. Therefore, as will be specifically discussed in this decision, the case will be remanded to the district director for further action.

In his decision, the district director found that because the petitioner failed to submit evidence of accreditation, the petitioner did not satisfy the requirements of 8 C.F.R. § 214.3(c). However, the portion of 8 C.F.R. § 214.3(c), relevant to the petitioning school states, in pertinent part:

> If the petitioner is a **vocational**, business, or language

[1] We note that although the school offers programs other than the M.C.S.E. and E-Commerce programs, the petition does not indicate that the petitioner seeks to enroll foreign students in these programs.

> school, or American institution of research recognized as such by the Attorney General, it must submit evidence that its courses of study are accepted as fulfilling the requirements for the attainment of an educational, professional, or vocational objective, and are not avocational or recreational in character.

(Emphasis added). Clearly, there is no requirement in this section of the regulations that the petitioner, as a vocational school, must submit evidence of accreditation.

This same error was made in the district director's July 23, 2003, request for evidence, in which the petitioner was requested to submit evidence that it confers recognized degrees. This request was made despite that fact that the petitioner's Form I-17 indicates that the petitioner offers diplomas for its vocational programs and is not a degree program.

Despite this misleading and inaccurate request for evidence, the petitioner submitted the documentation appropriate to establish eligibility under 8 C.F.R. § 214.3(c). The record contains three letters from employers indicating that they have found graduates of the petitioning school to be qualified for employment. The letters name the graduate, the graduate's position with the employer, and the dates of employment. These letters are not mentioned in the district director's decision. We find that such letters satisfactorily establish that the petitioner adequately prepares its students for employment in the field in which the petitioner seeks approval and, therefore, that the petitioner's courses have been accepted as fulfilling the requirements for the attainment of an educational, professional, or vocational objective.

The district director's second ground for denial was that the petitioner did not establish eligibility under 8 C.F.R. § 214.3(e)(1) that provides that the petitioning school must establish that:

> (i) It is a bona fide school;
>
> (ii) It is an established institution of learning or other recognized place of study;
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> (iii) It possesses the necessary facilities, personnel, and finances to conduct instruction in recognized courses; and
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> (iv) It is, in fact, engaged in instruction in those courses.

The statute and regulations are silent as to what constitutes an "established institution of learning." According to an internal memorandum,[2] an established institution of learning is one that has been in operation for two years with state approval. The memorandum does not preclude CIS from determining that an unaccredited institution is established if it has been in operation for less than two years, because the more narrow

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[2] James A. Puleo, Acting Executive Associate Commissioner, Office of Operations, Memorandum dated January 14, 1994.

construction would constitute impermissible rulemaking. The memorandum's author undoubtedly intended to give guidance and illustration of what would constitute an established institution of learning.

In this case, the petitioner has shown that it has been operating with state approval. The record contains evidence from the California Bureau for Private Postsecondary and Vocational Education (BPPVE) that the petitioner has been granted approval for its M.C.S.E. and E-Commerce courses.

The issue, as determined by the district director, was that on two occasions, the on-site visit of the CIS contractor and a subsequent visit by a CIS officer, there were no classes being taught and no students present. The checklist that is contained in the record does not show the date of the visit and has not been completed in any manner by the contractor. There are no written notes or boxes checked by the petitioner to provide any details as to what was reviewed. The checklist, therefore, offers no evidence, derogatory or otherwise, for what the contractor saw or did not see.

Although not detailed in the district director's decision, the record reflects that a CIS officer visited the petitioner on July 22, 2003, and found no students present or classes being conducted. From the petitioner's Form I-17 we note that registration for a session of classes was to have begun in July, but included no specific dates. Depending upon the length of the registration period and the date that the petitioner's classes actually started, there may be a discrepancy with Mr. [redacted] statement on appeal that no classes were in session at that time.

On remand, the district director shall request evidence showing the specific dates classes were in session. The petitioner should also be provided with the derogatory evidence surrounding the visit made by CIS officers on July 22, 2003, including the detailed conversation that took place during the phone call placed to the petitioner prior to the CIS officer's site visit. The petitioner should be afforded the opportunity to respond to the allegations made by the district director.

Regardless of whether the petitioner was actually engaged in instruction, the petitioner must also demonstrate whether it possesses the necessary facilities, personnel, and finances to conduct instruction in recognized courses. We find the record devoid of any evidence related to the school's facilities, finances, or personnel. This evidentiary requirement must be established in order for the petitioner to be able to show that it satisfies 8 C.F.R. § 214.3(e)(1). On remand, the petitioner should be requested to provide such evidence as will be outlined below.

Similar evidentiary requirements are also provided for in 8 C.F.R. § 214.3(b)[3], which states:

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[3] We note here that although the district director determined that the petitioner was ineligible for approval based upon the petitioner's lack of accreditation, he did not reference 8 C.F.R. §214.3(b), which discusses the requirement that a petitioner must submit evidence of licensure, approval or accreditation. Instead, as discussed earlier in our decision, the district director misapplied 8 C.F.R. §214.3(c). The plain language of 8 C.F.R.

> A school catalogue, if one is issued, shall be submitted with each petition. If not included in the catalogue, or if a catalogue is not issued, the school shall furnish a written statement containing information concerning the size of its physical plant, nature of its facilities for study and training, educational, vocational or professional qualifications of the teach staff, salaries of the teachers, attendance and scholastic grading policy, amount and character of supervisory and consultative services available to students and trainees . . . .

As the petitioner is not accredited by a nationally recognized accrediting body, the petitioner is also required to submit a catalogue, if one is issued, or a written statement with specific information. The initial submission contained two copies of petitioner's course catalogues, for January 1, 2001 to December 31, 2001, and January 1, 2003 to December 31, 2003, respectively. Although the district director's decision did not address any deficiencies related to this evidentiary requirement, we find that the catalogues do not adequately document what is required by regulation.

Size of school's physical plant/Nature of facilities for study and training.

Although the record contains a copy of the petitioner's lease agreement, neither this agreement, nor the course catalogues contain information about the petitioner's facility, including size and equipment. As the district director did not address the deficiencies in the record of proceeding, the petitioner should be given an opportunity to address the deficiencies.

Educational, vocational and professional qualifications of the teaching staff/Salaries/Attendance and grading policies.

While the Form I-17 indicates a total of eight instructors, the evidence contains information relating to only five instructors, including the owner of the petitioning school. There is no explanation for this discrepancy. The record also does not include certificates of approval from the BPPVE for any of the instructors at the petitioning school. The director should request such evidence on remand.

The catalogues do contain evidence of the petitioner's attendance and grading policies. The petitioner has established this requirement. However, the record does not contain any evidence of the salaries given to any of the petitioner's teaching staff. On remand, evidence of these salaries should be requested.

The amount and character of supervisory and consultative services

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§214.3(b) makes it clear that accreditation is not the only avenue for a petitioner to satisfy the regulatory requirement. Accordingly, we find that such approval from the BPPVE serves as a certification of licensure and/or approval by the appropriate official.

available to students.

The petitioner has not established that any academic, career planning and counseling is available to its students. This evidence should be requested on remand.

School finances.

The record contains no evidence related to the finances of the petitioning institution. The regulation clearly requires that the petitioner provide a *certified copy of an accountant's last statement of the school's net worth, income, and expenses.* On remand, the district director should request a certified copy of an accountant's last statement of the school's net worth, income and expenses as required by 8 C.F.R. § 214.3 (b).

The remaining issue is related to a copy of a contractor services agreement submitted into the record by the petitioner. The contract indicates that the petitioner is to be a supplier of "personnel to provide time and materials technical services . . . upon issuance of a Client purchase order." While there is no explanation as to why this contract was submitted with the petition, we must note that an M-1 nonimmigrant is not permitted to work in the United States while attending school, including any employment for practical training purposes. An M-1 is only permitted to participate in practical training *after* completion of his or her program and then only after authorization is given by CIS.[4] On remand, the district director should determine whether any M-1 student has been required by the petitioner to work on this contract as part of his or her program or whether the petitioner has recommended work authorization for an M-1 nonimmigrant inconsistent with the regulations.

This case shall be remanded to the district director to issue a request for evidence from the petitioning school as outlined above. After receipt and consideration of the additional evidence, the district director shall enter a new decision.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The district director's decision is withdrawn. The case is remanded to the district director for action consistent with the above discussion and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.

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[4] *See* 8 C.F.R. §214.2(m)(14).